

MISTER PHILLIPS, SBN 228991
LAW OFFICE OF MISTER PHILLIPS
P.O. Box 1162
Pinole, CA 94564
Phone: (510) 672-3756
Fax: (510) 222-4198
mister_phillips@hotmail.com

Attorney for Plaintiff Christian J. Bracko

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

C08-00239 JL

CHRISTIAN J. BRACKO,
Plaintiff,

vs.

ALEX CAINE; CITY OF SAN PABLO,
CA; and DOES 1-10, inclusive,
Defendants.

) Case No.:
)
) **COMPLAINT: POLICE**
) **EXCESSIVE/DEADLY FORCE**
)
) DEMAND FOR JURY TRIAL

JURISDICTION

1. The Court has original jurisdiction under 28 U.S.C. Section 1331, because the civil action arises under 42 U.S.C. Section 1983. The Court has supplemental jurisdiction under 28 U.S.C. Section 1367, because it has original jurisdiction.

VENUE

2. Venue is proper under 28 U.S.C. Section 1391(b), because a substantial part of the events or omissions giving rise to the claim occurred in the district.

FILED
2008 JAN 14 PM 3:30
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
E-filing
JFPP
ADR

INTRADISTRICT ASSIGNMENT

3. This action should be assigned to the Oakland Division, because a substantial part of the events or omissions giving rise to the claim occurred in the adjoining county of Contra Costa.

PARTIES

4. Plaintiff Christian J. Bracko is a black male.

5. Defendant Alex Caine is a white male. At all times relevant to this complaint, Mr. Caine was a police officer acting under the color of state law and within the scope of his employment. Mr. Bracko sues Mr. Caine individually and in his official capacity.

6. At all times relevant to this complaint, Defendant City of San Pablo, CA (the City) employed Mr. Caine.

7. Mr. Bracko is ignorant of the true names and capacities of Defendants Does 1-10, inclusive, and therefore sues them by such fictitious names. Mr. Bracko is informed and believes that Does 1-10, inclusive, are responsible in some manner for the damages he suffered as set forth herein. Mr. Bracko will amend this complaint to state the true names and capacities of Does 1-10, inclusive, when he ascertains them.

FACTS

8. On November 27, 2006, around noon, an unknown San Pablo, CA police officer tried to pull Mr. Bracko over in Parchester Village, a predominately black neighborhood in Richmond, CA. Mr. Bracko fled by car and then on foot in the same neighborhood.

9. The officer caught Mr. Bracko, wrestled him down onto his stomach, and handcuffed his hands behind his back. Mr.

1 Bracko's head was on the sidewalk. His body was in the street.
2 Mr. Bracko was under full control.

3 10. A few minutes later, another San Pablo police officer,
4 whom Mr. Bracko is informed and believes is Alex Caine, ran from
5 around the corner, jumped into the air, and crashed down onto
6 Mr. Bracko's head with his knee for no apparent reason.

7 11. Mr. Bracko lost consciousness. He could have lost his
8 life. Due to the awkward position Mr. Bracko's head and body
9 were in, Mr. Caine could have easily broken Mr. Bracko's neck.

10 12. Mr. Caine pulled Mr. Bracko to his feet. Mr. Bracko
11 could not walk without assistance. On their way to the police
12 car, Mr. Caine dropped Mr. Bracko into the gutter like a piece
13 of trash.

14 13. As a result of Mr. Caine's conduct, Mr. Bracko suffered
15 physical injuries, loss of consciousness, mental anguish, and
16 severe and serious emotional distress. Mr. Bracko also incurred
17 hospital bills.

18 14. The San Pablo Police Department has a policy, custom,
19 pattern, and/or practice of using excessive and/or deadly force
20 on people of color. The officers may assault, batter, and
21 sometimes even kill people of color without being seriously
22 reprimanded or disciplined by the department's command staff,
23 including Chief of Police Joseph P. Aita.

24 15. Mr. Caine violated Mr. Bracko's rights because of his
25 race and/or color. Mr. Caine was executing the department's
26 policy, custom, practice, and/or pattern of using excessive
27 and/or deadly force on people of color when he violated Mr.
28 Bracko's rights.

FIRST CAUSE OF ACTION**(42 U.S.C. § 1983 AGAINST ALL DEFENDANTS)**

16. Mr. Bracko incorporates the allegations set forth in paragraphs 1 through 15 of this complaint herein by reference. Mr. Caine violated Mr. Bracko's Fourth Amendment right to be free from unreasonable seizure by using excessive and/or deadly force on him. Mr. Caine was executing the department's policy, custom, practice, and/or pattern of using excessive and/or deadly force on people of color when he violated Mr. Bracko's rights.

SECOND CAUSE OF ACTION**(ASSAULT AGAINST MR. CAINE)**

17. Mr. Bracko incorporates the allegations set forth in paragraphs 1 through 16 of this complaint herein by reference. Mr. Caine assaulted Mr. Bracko.

THIRD CAUSE OF ACTION**(BATTERY AGAINST MR. CAINE)**

18. Mr. Bracko incorporates the allegations set forth in paragraphs 1 through 17 of this complaint herein by reference. Mr. Caine committed battery on Mr. Bracko.

FOURTH CAUSE OF ACTION**(INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS AGAINST MR. CAINE)**

19. Mr. Bracko incorporates the allegations set forth in paragraphs 1 through 18 of this complaint herein by reference. Mr. Caine's conduct caused Mr. Bracko to suffer severe emotional distress.

FIFTH CAUSE OF ACTION**(NEGLIGENCE AGAINST MR. CAINE)**

20. Mr. Bracko incorporates the allegations set forth in paragraphs 1 through 19 of this complaint herein by reference. Mr. Bracko was harmed by Mr. Caine's negligence.

SIXTH CAUSE OF ACTION**(NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS AGAINST MR. CAINE)**

21. Mr. Bracko incorporates the allegations set forth in paragraphs 1 through 20 of this complaint herein by reference. Mr. Caine's conduct caused Mr. Bracko to suffer serious emotional distress.

SEVENTH CAUSE OF ACTION**(CA CIV. CODE § 51.7(a) AGAINST ALL DEFENDANTS)**

22. Mr. Bracko incorporates the allegations set forth in paragraphs 1 through 21 of this complaint herein by reference. Under CA Civil Code Section 51.7(a), "All persons within the jurisdiction of this state have the right to be free from any violence, or intimidation by threat of violence, committed against their persons or property ... on account of [race or color]." Mr. Caine denied Mr. Bracko his rights under Section 51.7(a). The City aided, incited, or conspired in that denial through the department's policy, custom, practice, and/or pattern of using excessive and/or deadly force on people of color.

EIGHTH CAUSE OF ACTION**(CIV. CODE § 52.3(a) AGAINST ALL DEFENDANTS)**

23. Mr. Bracko incorporates the allegations set forth in paragraphs 1 through 22 of this complaint herein by reference.

1 Under Civil Code Section 52.3(a), "No governmental authority, or
2 agent of a governmental authority, or person acting on behalf of
3 a governmental authority, shall engage in a pattern or practice
4 of conduct by law enforcement officers that deprives any person
5 of rights, privileges, or immunities secured or protected by the
6 Constitution or laws of the United States or by the Constitution
7 or laws of California." Defendants engaged in a pattern or
8 practice of conduct that deprived Mr. Bracko of his rights under
9 the Constitutions or laws of the U.S. and CA.

10 **NINTH CAUSE OF ACTION**

11 **(CA GOV. CODE § 820(a) AGAINST MR. CAINE)**

12 24. Mr. Bracko incorporates the allegations set forth in
13 paragraphs 1 through 23 of this complaint herein by reference.
14 Under CA Government Code Section 820(a), "Except as otherwise
15 provided by statute (including Section 820.2), a public employee
16 is liable for injury caused by his act or omission to the same
17 extent as a private person." Therefore, Mr. Caine is liable for
18 the injuries his acts or omissions caused Mr. Bracko.

19 **TENTH CAUSE OF ACTION**

20 **(CA GOV. CODE § 815.2(a) AGAINST THE CITY)**

21 25. Mr. Bracko incorporates the allegations set forth in
22 paragraphs 1 through 24 of this complaint herein by reference.
23 Under Government Code Section 815.2(a), "A public entity is
24 liable for injury proximately caused by an act or omission of an
25 employee of the public entity within the scope of his employment
26 if the act or omission would, apart from this section, have
27 given rise to a cause of action against that employee or his
28

1 personal representative." Therefore, the City is liable for the
2 injuries Mr. Caine's acts or omissions caused Mr. Bracko.

3 **PRAYER FOR RELIEF**

4 26. Mr. Bracko incorporates the allegations set forth in
5 paragraphs 1 through 25 of this complaint herein by reference.
6 Mr. Bracko prays for the following relief jointly and severally
7 against all Defendants.


- 8 1. Compensatory damages according to proof;
- 9 2. Additional civil penalties of \$25,000.00 per defendant
10 pursuant to Civil Code Section 52(b)(2);
- 11 3. Punitive damages according to proof;
- 12 4. Injunctive relief;
- 13 5. Attorney's fees;
- 14 6. Costs; and
- 15 7. Any other relief the Court deems just and proper.

16 **DEMAND FOR JURY TRIAL**

17 Mr. Bracko does hereby request a jury trial.

18 Dated January 8, 2008

Respectfully Submitted,

19 
20 _____
21 Mister Phillips
22 Attorney for Plaintiff
23 Christian J. Bracko
24
25
26
27
28